

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 28, 2009

STATE OF TENNESSEE v. HEATHER L. JORDAN

Appeal from the Circuit Court for Blount County
Nos. C-16862 and C-16863 Michael H. Meares, Judge

No. E2008-01405-CCA-R3-CD - Filed July 30, 2009

The defendant, Heather L. Jordan, pled guilty in the Blount County Circuit Court to one count of forgery valued at less than five hundred dollars and one count of identity theft. The trial court sentenced her to an effective sentence of four years suspended to probation after the service of ninety days in jail. A revocation warrant issued when the defendant failed to report to serve the balance of her jail sentence as required by an order allowing her a medical furlough. Following a hearing, the trial court revoked the defendant's probation. In this appeal as of right, the defendant argues that the trial court abused its discretion in revoking her probation and ordering her to serve her full sentence in incarceration. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Mack Garner, District Public Defender (at trial); and J. Liddell Kirk (on appeal), attorneys for appellant, Heather L. Jordan.

Robert E. Cooper, Jr., Attorney General and Reporter; Melissa Roberge, Assistant Attorney General; Mike Flynn, District Attorney General; and Robert Headrick, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

OPINION

At the June 2, 2008, probation revocation hearing, Christopher Lamp testified that he was assigned to supervise the defendant's probation on January 15, 2008, following her medical furlough from the service of her ninety-day sentence. He recalled that he actually met the defendant for the first time at the hospital where she was being treated for complications related to her high risk pregnancy. During their initial meeting, he explained each of the defendant's conditions of probation, and the defendant wrote her initials beside each condition to indicate her understanding. He also instructed the defendant to contact him within twenty-four hours of her release from the hospital.

Mr. Lamp testified that he did not hear from the defendant again until February 8, 2008, after learning that she had been released from the hospital on January 21, 2008. However, in consideration of her pregnancy-related health problems, he did not file a probation revocation warrant. Several subsequent appointments were rescheduled due to the defendant's continuing medical problems. At a February 13 appointment, the defendant passed a drug screen. On February 19, the defendant contacted Mr. Lamp to inform him that she was hospitalized again. His next contact from her was on March 6, by which time the defendant's premature daughter had been born. Subsequently, several appointments passed with the defendant failing to report, some due to pediatrician's appointments. On April 9, Mr. Lamp met with the defendant and reminded her that her medical furlough required that she report to serve the remaining portion of her ninety-day sentence on April 15. On April 15, Mr. Lamp received a voice mail message from the defendant informing him that her newborn daughter had been hospitalized. On April 22, Mr. Lamp prepared a probation violation warrant.

On April 30, 2008, the defendant telephoned Mr. Lamp and told him she was prepared to report to jail the following Saturday. Also during the conversation the defendant told her probation officer that she was in Florida visiting her brother. That same day, the defendant was arrested in Blount County. The probation revocation warrant alleged that the defendant failed to report to complete her ninety-day jail sentence. Mr. Lamp testified that he was "not thoroughly convinced that [the defendant] would succeed on probation, just because she has to want to succeed. And up to this point, I haven't seen that." He also acknowledged that the defendant had telephoned him since her incarceration to apologize for lying and not reporting, but that "the point of her phone call to me was to see what I would recommend at her violation hearing."

The defendant testified that, at the time of the revocation hearing, she had two daughters, ages ten years and two and one-half months. She stated that she began to serve her ninety day sentence on January 7, but she received a medical furlough on January 15 after her "water broke." She recalled that she was back and forth to the hospital until her daughter was born February 23. She stated that she tried to stay in contact with her probation officer but she did not have a vehicle, did not drive, and had poor cellular phone coverage where she lived. The defendant admitted that she told her probation officer that she was in Florida on April 30; she explained that she did not want her infant daughter placed in the care of the child's father, and she was trying to wait until her step-mother could care for the baby while she served her jail sentence. The defendant did not deny her violation but asked the trial court to allow her to serve the ninety day jail sentence based upon the circumstances leading to the violation.

A trial court may revoke a sentence of probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of her release. Tenn. Code Ann. § 40-35-311(e). A trial court is not required to find that a violation of probation occurred beyond a reasonable doubt. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). The evidence need only show that the court has exercised conscientious judgment in making the decision and has not acted arbitrarily. Id. Our standard of review on appeal is whether the trial court abused its discretion in finding that a violation of probation occurred. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). In order to conclude that the trial court abused its discretion, there must be no substantial evidence to support the determination of the trial court. State v. Harkins, 811 S.W.2d 79,

82 (Tenn. 1991). Such a finding “reflects that the trial court’s logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.” State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)).

The defendant argues that the trial court abused its discretion in revoking her probation because she “was only doing what she believed she needed to do to provide care for her baby until she could get assistance.” The State argues that the defendant admitted to the violation; therefore, there was sufficient evidence to support the trial court’s revocation and the trial court did not abuse its discretion in revoking the defendant’s probation.

The record reflects that the defendant repeatedly failed to appear for meetings with her probation officer. As admitted by the defendant, she also failed to report to serve her jail sentence and lied to her probation officer regarding her whereabouts some fifteen days after she was ordered to report. The record further reflects that, despite her apparent concern for her infant’s care, the defendant made no attempt to seek guidance from the trial court regarding a reprieve from her report date to serve her sentence.¹ Therefore, we conclude that the trial court did not abuse its discretion in revoking the defendant’s probation and ordering her to serve her sentence in confinement. The judgment of the trial court is affirmed.

D. KELLY THOMAS, JR., JUDGE

¹ In fact, according to the defendant, because the defendant was arrested and immediately taken to jail pending the resolution of the revocation warrant, the child was ultimately placed in the care of the child’s father who is the defendant’s ex-boyfriend.